IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

COMPANY PETITION No. 19 of 2007
In
COMPANY APPLICATION No. 627 of 2006
with
COMPANY PETITION No. 20 of 2007

For Approval and Signature:

HONOURABLE MR.JUSTICE JAYANT PATEL

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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SHROFFS ENGINEERING LTD. - Petitioner(s)
Versus
. - Respondent(s)

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Appearance :
MRS SWATI SOPARKAR for Petitioner(s) : 1,
MR HARIN P RAVAL for Respondent(s) : 1,
MS AMEE YAJNIK for Respondent(s) : 1,

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CORAM : HONOURABLE MR.JUSTICE JAYANT PATEL

Date : 10/07/2007

ORAL JUDGMENT

1. The present petitions are for sanctioning the Scheme of Amalgamation. The petitioner of Company Petition No. 19/07 is the Transferee Company and the petitioner of Company Petition No. 20/07 is the Transferor Company. The Scheme which is proposed to be sanctioned is produced at Annexure-C in both the petitions.

2. In Company Petition No. 19/07, pursuant to the order dated 11.12.2006 passed by this Court(Coram:M.R.Shah,J.) in Company Application No. 627/07, the meeting of the equity shareholders was ordered to be convened on 20.01.2007 after issuing public advertisement and the Chairman was ordered to file the report. Pursuant thereto, Mr. Harshad M. Joshi, the Chairman appointed for such purpose has filed the affidavit dated 22.01.2007 together with the copy of the proceedings of the meeting showing that the Scheme of Amalgamation is approved by 100% in number and in value of equity shareholders present at the meeting.

3. In the case of the Transferor Company, pursuant to the order dated 11.12.2006 passed by this Court(Coram: M.R.Shah,J.) in Company Application No.628/06, as the consent letters of all equity shareholder, secured creditors, unsecured loan creditors, and unsecured trade creditors were produced, the meeting of all equity shareholders, secured creditors, unsecured loan creditors, unsecured trade creditors were dispensed with.

4. Both these petitions came to be admitted on 02.02.2007 and it was ordered to advertise in two daily newspapers, viz. Indian Express and Loksatta Jansatta, both Vadodara edition and the publication in the Government gazette was dispensed with. The notice was also ordered to be issued to the Central Government through Regional Director, Department of Company Affairs, Mumbai, and in case of Transferor Company, the notice was also issued to the Official Liquidator for examination through Chartered Accountant into the affairs of the Company.

5. The affidavit is filed by Dharmendra Rathod, Clerk of the learned advocate Smt. Soparkar together with the copy of the paper publication pursuant to the order passed by this Court. As per the affidavit filed by Harshad M. Joshi, Director, no objection is received by the petitioner or their learned advocate in response to the advertisement opposing the Scheme of Amalgamation or otherwise.

6. The Official Liquidator has filed the report dated 07.03.2007 with the report of the Chartered Accountant and has stated in the report that the affairs of the transferor Company have not been conducted in a manner prejudicial to the interest of the members or public interest.

7. In response to the notice issued to the Central

Government, Mr. P.L. Malik, Assistant Registrar of Companies has filed his affidavit raising objection based on the communication received by the Registrar of Companies vide letter dated 27.02.2007 from the Regional Director, Company Affairs.

8. The first objection for complying with the provisions of Section 94/97 of the Companies Act and the requirement to file Form No.5 & 23 with the Registrar of Companies would not survive in view of the affidavit filed by Haresh P. Ashar, Director of the Transferor Company dated 16.06.2007 praying for deletion of clause 11 of the Scheme of Amalgamation. Therefore, in view of the said affidavit and the declaration made before this Court on behalf of the Transferor Company, clause 11 of the Scheme of Amalgamation shall stand deleted.

9. The second objection raised for clarification of the sale/service being provided between the Transferor and the Transferee Company and the charges and payment of the tax/duties from the appointed date would also not survive further in view of the affidavit filed by Harshad M.Joshi, the whole time Director of the Transferee Company dated 20.03.2007 and more particularly in view of the statement made at para 4 and the details thereof furnished at Annexure-I, to the said affidavit showing that the transactions have taken place and the value of duties/taxes shown

are of 10.57 Lakhs. It is further stated in said paragraph that upon the scheme being effective, the taxes paid on such transactions during the period from appointed date till effective date, shall be treated in accordance with the relevant provisions of law. Therefore, the objections raised on that par is taken care of.

10. No other adverse circumstance are brought to the notice of this Court.

11. Hence, the present Scheme of Amalgamation is sanctioned as per the provisions of the Companies Act, save and except the deletion of clause 11 as observed and ordered earlier.

12. Petitions are allowed to the aforesaid extent.

13. The fees of the Central Government Standing Counsel shall be paid by the petitioning Companies which is quantified at Rs.3,500/- for each petition. It will be open to the petitioning Company to pay the cost directly or to the counsel concerned by A/c. Payee cheque.

(JAYANT PATEL, J.)

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